

in part because a staff member of the Wisconsin Commission had studied the correlation between Ameritech's manual orders and delay. Id. ¶¶ 172 n.430, 181 n.455. BellSouth has not provided sufficient data to conclusively make a similar assessment (BellSouth does not provide separate data on average installation intervals for orders manually processed as opposed to automatically processed, for example). But there is every reason to believe that the problems found with Ameritech are inherent with manual processing and that these problems will increase with increased volumes and complexity of orders. See DOJ SC Eval. A22-23. Indeed, the problems with BellSouth are likely to be worse than those with Ameritech, because BellSouth relies on manual processing in many instances, such as loss notification and jeopardy notification, where Ameritech did not.

a. BellSouth's Manual Return of Reject Notifications is Discriminatory.

One reason the Commission found Ameritech's OSS deficient was the length of time it took for Ameritech to notify CLECs that their orders had been rejected. Mich. Order ¶¶ 186, 188. The Commission correctly found that the extended time period was related to Ameritech's manual processing of a relatively high percentage of orders and a corresponding need for manual processing of these orders before returning a reject message through its EDI. See id.

The situation in BellSouth's region is even worse than in Ameritech's region. BellSouth engages in manual processing of almost all reject notifications -- even for orders that, if entered correctly, would not have fallen out for manual processing -- and it returns these rejects manually via fax or via e-mail.¹² King Decl. ¶¶ 95, 131, 132, 134; King Supp. Decl. ¶ 7. This is so even though MCI provided BellSouth with specifications to enable it to return rejects via EDI. Id. ¶¶ 132, 136.

Return of rejects via fax or e-mail is entirely unacceptable. Reject notification is a vital

¹² Subsequent to its South Carolina filing, BellSouth agreed, as an interim measure, to return reject messages twice a day via e-mail. King Supp. Decl. ¶ 7. While hardly acceptable, this e-mail process at least eliminates the vagaries of the fax machine from the process.

process, because, until a CLEC is informed that its order has been rejected, it cannot begin work to correct the order and re-enter it. Manual processing and transmission of rejects vastly slows the process down. Florida PSC Order No. PSC-97-1459-FOF-TL (Nov. 19, 1997) (“FPSC Order”) 83 (ex. L hereto). Manual processing makes the timing of the process dependent on when BellSouth employees begin work on the order and how long it takes them to work on the order. King Decl. ¶ 133; DOJ SC Eval. A23 & n.36. Manual processing of rejects by BellSouth employees also slows the process down on the CLEC’s side of the interface, because BellSouth employees, unlike a computer, often send back cryptic, non-standard error messages which take time for CLECs to decipher and often force them to call BellSouth for clarification. King Decl. ¶ 133; DOJ SC Eval. A23 & n.36. Finally, MCI has recently learned that when the CLEC corrects the order and transmits it back to BellSouth via EDI, the order will fall out for manual processing. King Supp. Decl. ¶ 16.

The manual processing and transmission of reject notifications is likely to be particularly disastrous at the early stages of competition when the percentage of rejects is likely to be especially high and CLECs are establishing their reputation in the marketplace for the quality of their services. King Decl. ¶ 135. At these early stages, CLECs are still learning the process and are likely to make mistakes. *Id.* At these stages, BellSouth is also likely to reject a high number of orders erroneously, because it has not yet input all necessary edits into its system to prevent erroneous rejects. Indeed, BellSouth’s own data show that 65% of automated orders were rejected in July, 66% in August and 61% in September. Aff. of William Stacy (Stacy I Aff.), ex. WNS-41 (BST App. A, Tab 12). Although BellSouth asserts that most of the August and September rejects were the fault of CLECs, it provides no evidence to support its assignment of fault. Indeed, its assertion of fault is highly dubious given that almost all CLECs had a high percentage of orders rejected (*id.*; King Decl. ¶ 135; DOJ SC Eval. A-26-27); at a minimum the fact that the same problems beset almost all CLECs suggests that

BellSouth failed to give CLECs the guidance they need about how BellSouth's systems operate.

Regardless of fault, however, what is clear is that there have been and are likely to continue for some time to be a high number of rejects. King Decl. ¶ 135. As a result, the manual processing and transmission of all rejects is likely to significantly delay completion of many orders.

These same difficulties do not, of course, beset BellSouth's retail orders. In its retail operation, when orders are rejected by its back end systems, BellSouth electronically notifies its employees who work the rejects. King Decl. ¶ 132. BellSouth has presented no data on how long this notification process takes but it is almost certainly relatively instantaneous -- less than 30 minutes according to the Florida PSC. FPSC Order 83.¹³ BellSouth also has failed to present data on the length of time it takes to process and transmit rejects to CLECs, King Decl. ¶ 133, but this manual process certainly takes much longer than BellSouth's internal process and the length of time is likely to increase with increased volumes.

b. BellSouth's Manual Return of Service Jeopardies is Discriminatory.

BellSouth also processes and transmits one of two major categories of jeopardy notifications manually. Jeopardy notifications inform the CLEC that BellSouth will not turn up a customer's service on the date that BellSouth had promised. Jeopardies are important because they enable a CLEC to inform its customer that service will not be turned up on the promised date -- notification that customers expect. King Decl. ¶ 139. In addition, when the customer calls the CLEC to complain that service was not turned up, a CLEC that has not received a jeopardy notification will be unable to explain to the customer why the customer's service has not been turned up. Id.

¹³ Ameritech's failure to submit comparative data on the length of time it took to provide FOCs to itself and to CLECs led this Commission to state that it expected such data to be submitted in future applications. See Mich. Order ¶ 187. BellSouth ignores this command. It fails to submit comparative data not only for rejects, but also for FOCs, jeopardies, and completion notices. King Decl. ¶¶ 132, 140, 141.

BellSouth should return jeopardies in an automated fashion through EDI. BellSouth has agreed to this for one of two major categories of jeopardies -- missed appointment jeopardies, i.e., jeopardies caused when the customer is not at home on the date that service is supposed to be turned up. King Decl. ¶ 138. But BellSouth has not agreed to this with respect to service jeopardies, i.e., jeopardies caused when BellSouth learns that it lacks the facilities or manpower to turn service up on the promised date. King Decl. ¶¶ 137, 139; DOJ SC Eval. A23; King Supp. Decl. ¶ 10. Instead, BellSouth intends to notify CLECs of service jeopardies via a phone call. King Decl. ¶ 139. Again, this is so even though MCI shared with BellSouth specifications to enable BellSouth to provide service jeopardies via EDI. Id. ¶ 136.

The manual return of service jeopardy notifications is almost certain to significantly delay the return of jeopardies in many cases past the date when the customer's service was supposed to be turned up. Indeed, with respect to the orders MCI has submitted to date, BellSouth has generally failed to return jeopardies at all even though it has frequently missed the due date it promised. King Decl. ¶ 139. This is discriminatory. BellSouth has submitted no data on how long it takes to return (or how often it returns) jeopardies to CLECs. Id. ¶ 140. Nor has BellSouth submitted any data on how long it takes to return jeopardies in its retail operation. Id. But, even if it were not BellSouth's burden of proof -- which it is -- to show parity in return of jeopardies, it is certain that BellSouth's return of jeopardies in its retail operation is faster than its return of jeopardies to CLECs. In its retail operation, BellSouth returns jeopardies in an automated fashion to its customer service representatives who then call the customers. For CLECs, BellSouth also returns the jeopardies to its customer service representatives in an automated fashion, but these representatives must then call the CLECs, who then must in turn call their customers. In other words, one phone call is required to notify a BellSouth

customer, two phone calls are required to notify a CLEC customer. King Decl. ¶ 140. This is not parity.

c. BellSouth's Manual Return of Loss Notifications Is Discriminatory.

BellSouth intends to provide CLECs with "loss notifications" via letters sent through the United States mail -- or, in some cases, to refrain from providing notice at all. King Decl. ¶¶ 95, 186; King Supp. Decl. ¶¶ 8-9. Loss notifications are used to inform CLECs that one of their customers has switched to another carrier. If, for example, an MCI local customer switches back to BellSouth, a loss notification is the only way that MCI will receive notice of the change. King Decl. ¶ 186. If BellSouth notifies MCI by sending a letter, MCI will continue to believe the customer is its customer during the days in which the letter is in the mail. Id. ¶ 187. As a result, MCI might well bill the customer for those days of service -- resulting in exactly the sort of double billing situation that troubled this Commission in Ameritech's Michigan filing. Id.; Mich. Order ¶ 203.¹⁴ In addition, MCI would not know to attempt to win back this customer until MCI receives the letter. King Decl. ¶ 187.¹⁵ In contrast, BellSouth will be able immediately to attempt to win back its customers who switch to a CLEC, because BellSouth, as the carrier that actually makes the switch, will instantly receive the equivalent of a loss notification. Indeed, BellSouth has indicated its intention to send win-back letters immediately after a customer switches to a CLEC. King Decl., Att. 42.

BellSouth could easily avert this discrimination. As with rejects and jeopardies, MCI shared with BellSouth specifications to enable it to provide notifications of competitive disconnects via EDI.

¹⁴ The problem is, of course, substantially exacerbated in those instances where BellSouth refrains from providing loss notification altogether. King Supp. Decl. ¶ 9. In those cases, the customer might be double billed for months -- or at least until the customer calls up to complain.

¹⁵ It is important to contrast a proper attempt to win back customers after they have switched carriers from BellSouth's improper attempts to misuse information only it possesses, as the incumbent, to retain customers before they are switched to competitors. See part IV below.

King Decl. ¶ 186. As with rejects and jeopardies, however, BellSouth chose to maintain its competitive advantage over CLECs, in this case by providing notification of disconnects through the slowest possible means of communication.

d. BellSouth's Failure to Notify CLECs When Their Customers Change PICs is Discriminatory.

BellSouth does not provide any notice to CLECs when one of their local customers changes its interexchange carrier. If, for example, an MCI local customer switches from AT&T to Sprint as its interexchange carrier, BellSouth does not notify MCI even though it is BellSouth that processes the change. King Decl. ¶ 188; King Supp. Decl. ¶ 11. As a result, CLECs -- unlike BellSouth -- cannot tell their customers the identity of their interexchange carrier. King Decl. ¶ 188.

More troublesome still is that it will be very difficult for a CLEC to pass charges for changing primary interexchange carriers through to its customers. Id. When a BellSouth retail customer changes interexchange carriers, BellSouth charges that customer a fee for doing so. But when a CLEC's customer changes interexchange carriers, it is the CLEC, not the CLEC's customer, that BellSouth will bill for the PIC change. This is because the CLEC is officially the customer of BellSouth. Parity can only be achieved, therefore, if the CLEC can pass the PIC change charge on to its customer, so that its customer, like BellSouth's customer, pays the charge. But in order to do this, the CLEC must know that the customer has changed PICs. Because BellSouth fails to notify CLECs of this change, the CLEC only becomes aware that the customer has changed PICs when the CLEC is billed for the PIC change as part of its general monthly bill. Use of this monthly bill to pass on PIC change charges is a cumbersome and expensive process which requires going through the bill to pull out customer specific information. Id. It will also cause significant customer dissatisfaction as the

CLEC cannot bill the customer for the PIC change charge until the CLEC has received its monthly bill and then sent out a bill to the customer. Id.

e. BellSouth's Manual Ordering Processes Are Discriminatory.

BellSouth's ordering processes also are insufficiently automated. BellSouth claims to have automated ordering for resold POTS orders and for some unbundled elements but not orders for complex services. Even for POTS orders, BellSouth's processes are not sufficiently automated. MCI recently learned that all supplemental orders -- orders to change a pending order -- fall out for manual processing. King Supp. Decl. ¶ 16. Moreover, BellSouth's own data show that only 24% of orders flowed through in July, 34% in August and 39% in September. (Stacy I Aff., ex. WNS-41). Although BellSouth claims that after adjusting its data for CLEC-caused errors the "adjusted flow-thru" was 91% in August and 89% in September, two month's worth of data based on BellSouth's assessment of which errors were caused by CLECs, an assessment that is highly dubious as discussed above, is hardly adequate to show sufficient flow through. King Decl. ¶ 117; DOJ SC Eval. A22 & n. 33. BellSouth admits that even "adjusted" flow through was only 58% as late as July. Stacy I Aff., ex. WNS-41. Moreover, even BellSouth's dubious 91%/89% figures are not sufficient flow through. This Commission suggested a relevant benchmark for assessing flow through was the percentage of retail orders rejected by the BOC's back end systems for its own orders (Mich. Order ¶ 178); BellSouth fails to provide data showing this percentage. In any case that percentage is almost certainly lower than 9-11%. King Decl. ¶ 118. The Department of Justice explained in its evaluation of BellSouth's South Carolina application that "the Department understands that no less than 97% of BellSouth's residential orders . . . flow through." DOJ SC Eval. A22.¹⁶

¹⁶ The Department of Justice also expressed its understanding that 81% of BellSouth's retail business orders flow through -- presumably, the 19% that do not flow through are complex orders, orders BellSouth does not even seem to be including in its analysis of CLEC flow through.

BellSouth's automated ordering processes with respect to unbundled elements are even less well established. Although BellSouth does claim that orders for a limited number of UNEs (loop, port, interim local number portability, loop plus interim number portability) can be ordered through EDI, and that a limited number of other infrastructure type UNEs (trunking is the only example provided by BellSouth) (Stacy I Aff. ¶ 58) can be ordered through its EXACT interface, BellSouth presents no data, even internal test data, to show that even these orders do indeed flow through its systems without manual intervention. King Decl. ¶ 126; King Supp. Decl. ¶ 14. All other UNEs must be ordered manually. King Decl. ¶ 127. BellSouth forthrightly acknowledges that it has not designed its OSS to handle basic combinations such as loop plus port (which BellSouth calls "platform"). Stacy I Aff. ¶ 59.¹⁷ Given this Commission's instruction that a BOC's OSS must support all modes of competitive entry, BellSouth's OSS is clearly deficient.

BellSouth also does not claim to have automated ordering of what it misleadingly calls complex services (essentially all services other than plain old telephone service ("POTS")). King Decl. ¶ 119; DOJ SC Eval. A22. Although BellSouth claims that four complex services can be ordered via EDI, it acknowledges that even these orders fall out for manual processing. King Decl. ¶ 125; FPSC Order 92. As for other "complex" services, including basic business services such as Centrex and private lines, CLECs must order them through the BellSouth "account team." King Decl. ¶ 121. The account team is far more integrally involved in the ordering process with respect to the orders it receives than BellSouth employees normally would be even in the processing of manual orders. The account team is not responsible merely for typing CLEC orders into BellSouth's systems. The account team is involved at almost every step of such orders from designing the service through typing the

¹⁷ BellSouth must, at a minimum, provide those elements on a combined basis unless and until it provides reasonable and nondiscriminatory access to its network to permit CLECs to combine network elements.

orders. Id. The intimate involvement of BellSouth employees in orders for what will generally be CLEC's biggest customers is hardly a recipe for competition. Id. These functions must be automated so that BellSouth's account team is no longer deeply involved in MCI's and other CLECs' key business orders.

Although BellSouth claims that its use of account teams provides parity, the involvement of BellSouth employees in orders for CLEC customers is certainly not equivalent to the involvement of BellSouth employees in orders for BellSouth's own customers. Id. ¶ 124. Nor does it even involve equivalent steps: a BellSouth customer arranges its complex order directly with the BellSouth account team which then enters the order into BellSouth's automated ordering systems. Id. A CLEC customer, in contrast, arranges its complex order with the CLEC which in turn arranges the order with the BellSouth account team which in turn enters the order. Id. This is not parity. If the CLEC's process were equivalent to BellSouth's, the BellSouth account team would be eliminated from the process. A CLEC customer would arrange its complex order with the CLEC which would then enter the order into its automated ordering systems. Id.

The most egregious aspect of BellSouth's requirement of substantial CLEC coordination with BellSouth employees in placing complex orders is that it applies to orders for migrating complex services "as-is" and applies to all orders for more than eight lines, including orders for POTS. Id. ¶¶ 120-122. Orders to migrate service as-is involve changing existing BellSouth customers to CLECs with no change in service. The customer could have the most complicated telephone service imaginable and a migration-as-is would involve nothing more than changing the customer's billing from BellSouth to the CLEC. Id. ¶ 122. As a result, none of BellSouth's excuses for failing to automate complex services applies to migrations-as-is. The only explanation for BellSouth's requirement of BellSouth employees manually to process such orders is to ensure that it is not easy for

big business customers, those likely to order complex services, to migrate away from BellSouth.

Similarly, BellSouth's decision that all orders for more than eight lines have to go through the BellSouth account teams is an entirely arbitrary one. Again, the only explanation for this requirement is that it significantly slows the processing of the majority of business orders. Once again, BellSouth's decision helps lock in the customers who are potentially the most important to make a CLEC viable.

2. BellSouth's Ordering Processes Lead to Loss of Dial Tone.

BellSouth's ordering processes lead to the loss of dial tone for many customers. As explained above, when a customer migrates from BellSouth to a CLEC, BellSouth should treat the order as nothing more than a billing change. There is no work that needs to be done to the customer's phone line.¹⁸ Instead, however, BellSouth treats the order as two separate orders -- one to disconnect the customer's line and one to reconnect the customer's lines. King Decl. ¶ 185. As a result, when there is a gap between completion of the first step and completion of the second step, the customer loses dial tone. Id. Out of 540 MCI resale customers as of the end of September in BellSouth's region, seventeen have reported to MCI that they lost dial tone for some period of time after they were switched to MCI from BellSouth. Id.

BellSouth also acknowledges that its disconnect/reconnect process may cause double billing, because "[a]ny time there are multiple service orders issued in this manner, there is a potential for a timing difference for completion." See Hollett SC Aff. ¶ 10 (BST SC App. A, Tab 6). BellSouth further states that at some point in the future it will adopt a new process for migration orders. See id. Once again then, instead of proving what is being provided today, BellSouth discusses what will allegedly be available tomorrow.

¹⁸ An order to migrate as specified, in contrast to an order to migrate as-is, involves a change in features. The feature change requires only a translation in the switch, not disconnection of the customer.

3. BellSouth's Lack of System-to-System Interfaces is Discriminatory.

For two major OSS processes, pre-ordering and maintenance and repair, BellSouth offers its LENS and TAFI interfaces respectively. LENS and TAFI are fundamentally deficient on their face, because they are not standard system-to-system interfaces but rather proprietary graphic user interfaces ("GUIs"). System-to-system interfaces are essential for major national carriers such as MCI. A system-to-system interface connects the BOC's systems to the CLEC's systems. When the CLEC enters data into its systems, the data, which need to be in the BOC's systems as well as the CLEC's systems, automatically flows into the BOC's systems. This enables the CLEC's customer service representatives to use only the CLEC's own systems, rather than both the CLEC's systems and the BOC's systems.

Because the CLEC can use its own screens and does not need to use the screens provided by the BOC, the CLEC can use a single set of screens on a national basis, and can compete with the BOC by designing screens superior to those used by the BOC in terms of efficiency and functionality. King Decl. ¶ 45. Forcing a national CLEC such as MCI to use different screens for each BOC for pre-ordering and maintenance and repair, with different names and codes for features appearing on the screens of each BOC, significantly increases the difficulties for representatives using the multiple systems and substantially escalates the costs for training. Id.

System-to-system interfaces also avert the need for dual data entry. Id. ¶¶ 43-44, 200. Both LENS and TAFI require the CLEC to enter data separately into its own systems and then into the BOC's systems. Such dual data entry wastes time. Id.; FPSC Order 81, 95. It also increases errors --

when, for example a CLEC enters and validates an address in LENS, re-typing the address into MCI's systems risks mistakes that lead to order rejection.¹⁹ King Decl. ¶ 44, 200. In contrast, of course, BellSouth representatives only have to enter data into their own systems -- systems designed by BellSouth. Id. ¶ 43.

System-to-system interfaces are more efficient in other ways as well. Because CLEC customer service representatives do not have to use the BOC's systems, they do not have to waste time logging into the BOC's systems in addition to the CLEC's systems. Id. ¶ 46. They can also leave their screens on all day, rather than facing the risk, present with both LENS and TAFI, of being logged out after a certain period of non-use. Id. ¶¶ 46, 51, 201. Finally, system-to-system interfaces reduce the risk of system "down" time which has proven relatively substantial with respect to LENS. Id. ¶¶ 46, 86.

Based on just such reasoning, the Department of Justice, in its comments on SBC's Oklahoma application and BellSouth's South Carolina application, emphasized the importance of system-to-system interfaces. See Department of Justice Evaluation, CC Docket No. 97-121, pp. 75-76 ("DOJ Okla. Eval."); DOJ SC Eval. A4-5, A10-A14. In fact, even other BOCs have recognized the need of large CLECs for system-to-system interfaces. Ameritech's OSS expert Joseph Rogers, in discussing Ameritech's own Graphic User Interface for maintenance and repair, acknowledged that "[it] is not an interface as such, however, and it cannot be integrated with the CLEC's other information systems. Thus, we expect that it will be useful primarily to small carriers with less fully developed information systems." (Affidavit of Joseph Rogers, Application of Ameritech Michigan, CC Docket 97-298, ¶ 92).

¹⁹ Some of the required dual data entry could be averted if BellSouth would provide MCI with downloads of its Regional Street Address Guide (RSAG) as it is contractually required to do. King Decl. ¶ 56; King Supp. Decl. ¶ 6. MCI could then integrate the RSAG into its own systems and could avoid using LENS for address validation.

Like Ameritech's GUI, BellSouth's LENS and TAFI are not interfaces as such and are completely inadequate to serve the needs of large CLECs such as MCI.

In emphasizing the importance of system-to-system interfaces, the Department of Justice also correctly noted that the industry standards bodies have focused almost exclusively on such interfaces. See DOJ Okla. Eval. 75-76. Indeed, neither LENS nor TAFI is an industry standard interface. For maintenance and repair, the system-to-system T1M1 electronic bonding interface, not TAFI, is the industry standard. King Decl. ¶ 199.²⁰ BellSouth's contention that it will make T1M1 available in the future again only emphasizes that it has not made T1M1 available today.²¹

For pre-ordering, EDI TCP/IP SSL3 is the interim industry standard. Id. ¶ 41. It is a system-to-system interface. Id. Although final specifications for EDI TCP/IP SSL3 have not yet been released (they are due out early next year), the ECIC Committee reached consensus last February that EDI TCP/IP SSL3 would be the interim standard. Id. ¶¶ 41, 42.²² Nonetheless, BellSouth has repeatedly refused to meet with MCI even to discuss development of such an interface. Id. ¶ 42.

This Commission has indicated that adoption of industry standards is not necessarily a pre-requisite to meeting the requirements of section 271, and that it might be willing to reconsider that decision sometime in the future. See Mich. Order ¶ 217. MCI continues to believe that adoption of industry standards is of vital importance. Not only do industry standards reflect the consensus of the

²⁰ In addition to its failure to offer a T1M1 interface, BellSouth fails to offer industry standard feature identification codes and has not yet made available industry standard CABS BOS billing. King Decl. ¶¶ 195-98, 209-12; King Supp. Decl. ¶ 13.

²¹ BellSouth does make T1M1 available for maintenance and repair of a limited number of "designed services," but T1M1 is not currently available for repair of ordinary resold lines or basic unbundled elements such as loops.

²² The industry has also begun discussing a final industry standard for pre-ordering. The options being considered are system-to-system interfaces including EDI TCP/IP SSL3. King Decl. ¶ 41 n.4.

industry as to what is best, but they also enable national carriers to focus development and training costs on a single interface.²³ King Decl. ¶¶ 20-25. In fact, the Commission has already indicated that “the use of industry standards is the most appropriate solution to meet the needs of a competitive local exchange market.” Mich. Order ¶ 217. And, for reasons already articulated, that view is clearly borne out here. Even aside from their proprietary nature, both LENS and TAFI clearly discriminate against CLECs, because they fail to connect CLECs’ systems to BellSouth’s systems.

BellSouth implicitly acknowledges the inadequacy of LENS in stating that, “[i]n an effort to make LENS even more useful to larger CLECs, BellSouth has provided to interested CLECs a LENS interface specification that allows for direct integration of data into a CLEC’s systems. . . . [M]oreover, BellSouth will make available machine-to-machine interfaces for access to pre-ordering.” BST Br. 29. The machine-to-machine interface that BellSouth ostensibly “will make available” is not available today. See BST Br. 26; DOJ SC Eval. A10-11.²⁴ As for BellSouth’s ostensible offer of data for direct integration into CLECs’ systems, MCI has repeatedly requested specifications to enable it to perform such “integration” and still has not received the up-to-date specifications that would allow it to do so. King Decl. ¶ 48; King Supp. Decl. ¶ 5; ALJ Rec. 26-27; DOJ SC Eval. A10-11 n.16, A14; FPSC Order 92-93. Moreover, the method of “integration” to which BellSouth refers is far inferior to integration using a system-to-system interface -- it causes extensive delay in the return of pre-order

²³ Although not an issue here, adoption of a proprietary system-to-system interface would not avert the need for industry standards. While a CLEC using different system-to-system interfaces for different BOCs could continue to use a national set of screens, the CLEC would still have to expend needless resources developing and updating several interfaces.

²⁴ This interface called EC-LITE is not, in any case, the interim standard that will soon be finalized by the industry. Nor is it among the interfaces the industry is considering as its final pre-ordering standard. King Decl. ¶ 41 n.4. Rather, it is a customized interface that AT&T helped design. Id. ¶ 43 n.5. MCI has no objection to BellSouth designing an interface in conjunction with a CLEC, provided BellSouth will do so on a nondiscriminatory basis for all CLECs, and provided BellSouth implements the industry standard interface for CLECs who need a standard interface.

information, fails to avoid the disadvantages of LENS relative to system down time, and must be changed extensively each time BellSouth modifies its own OSS systems. King Decl. ¶¶ 49-50, 59. BellSouth cannot therefore escape the inadequacy of LENS by claiming that it offers some theoretical alternative which is itself inferior and which is not in any case ready. Moreover, BellSouth does not even claim that it makes available a similar alternative with respect to TAFI. See FPSC Order 95.

4. BellSouth's Operations Support Systems Do Not Work In Practice.

In addition to being deficient on their face, BellSouth's OSS do not work reliably in practice. BellSouth's data are insufficient to demonstrate the operational readiness of its systems (FPSC Order 91, 93-94), and MCI's data show that those systems are not ready. BellSouth has completed only 24% of MCI's resale orders by the date that MCI requested (dates requested were generally set by the installation intervals provided by BellSouth). King Decl. ¶ 147; King Supp. Decl. ¶ 34. Indeed, only 66% of the time has BellSouth even completed the orders by the date to which BellSouth commits after MCI has submitted its orders. King Supp. Decl. ¶ 37. For the other 34% of the orders, BellSouth has missed the date to which it committed by an average of 4.71 days. Id. For its own retail customers, on the other hand, BellSouth meets the due dates the customers requested almost 100% of the time for orders that do not require a dispatch and almost 90% of the time for orders that do require a dispatch. Id. ¶¶ 34-35.

Overall, BellSouth has completed MCI's resale orders in an average of 4.91 days. Id. ¶ 47. Even simple orders for change as-is, which BellSouth says should be processed the same day if placed by 3:00 p.m., or the next day if placed after 3:00 p.m., require 2.65 days to process. Id. ¶ 45. Orders for change as specified, which merely require a simple translation in the switch, take an average of 5.79 days to process. Id. And orders for new installations, most of which do not require a dispatch, take an average of 8.80 days to process. Id. ¶ 46. BellSouth does not provide exactly comparable figures for its

retail customers, and the figures it does present seem highly dubious, King Decl. ¶ 166, but even these figures show superior performance for retail customers than for MCI -- 1.6 days to process what BellSouth calls “change orders non-dispatch” for its residential retail customers in August and September (presumably roughly comparable to a combination of change as is orders and change as specified orders for CLECs), 4.0 days in August and 3.4 days in September for new installations non-dispatch, and 6.8 days in August and 6.6 days in September for new installations dispatched. William Stacy Affidavit on Performance Measurements (“Stacy II Aff.”), ex. WNS-12 (BST App. A, Tab 13).

In addition to resale orders, MCI has placed orders for loop/port combinations -- which BellSouth treats as orders for resold plain old telephone service. For these orders, MCI has less information than its ordinary resale orders. BellSouth has failed to provide any completion notices on these orders, and, even when MCI called BellSouth to obtain the information, BellSouth was only willing to provide information on a relatively few orders. King Decl. ¶ 154. The limited information that MCI does have, however, indicates that BellSouth is missing the requested due date, and even the date promised on the FOC, on a high percentage of orders. Id. ¶ 155. On some orders, many of which were placed weeks ago, BellSouth has failed even to send MCI a FOC, suggesting that these orders are still pending in BellSouth’s systems. Id.

BellSouth presents its own data in an attempt to show that its performance with respect to CLECs is at parity with its performance with respect to its retail customers. BellSouth’s data are radically inconsistent with MCI’s data, which unambiguously show a lack of parity -- casting BellSouth’s data into extreme doubt. In fact, BellSouth’s data are flawed on their face and fail to show parity.

BellSouth’s data are suspect because BellSouth fails to explain the categories of measurements it uses and what orders fall within each category. Id. ¶¶ 144, 164, 167; King Supp. Decl. ¶ 32.

Moreover, some of the measurements that BellSouth does explain measure the incorrect interval. For example, BellSouth measures average installation intervals from a point after any manual processing has occurred to a point before the order has completed. *Id.* ¶ 163; King Supp. Decl. ¶¶ 41-43; DOJ SC Eval. A34 n.52.²⁵

In any case, BellSouth's flawed reports, even if taken at face value, do not show parity. BellSouth attempts to obfuscate this by counting categories of orders for which it allegedly performs better for CLECs and categories of orders for which it performs better for its retail customers. But this ignores the fact that, as is apparent from the underlying data in ex. WNS-12 to William Stacy's Performance Measurements Affidavit, most CLEC orders fall into certain categories (e.g. residential orders non-dispatch) in which BellSouth consistently performs better for its retail customers than for CLECs. King Decl. ¶¶ 169, 178; King Supp. Decl. ¶¶ 39, 44, 48. Moreover, BellSouth's performance towards its retail customers is much more consistent than its performance towards CLECs. King Decl. ¶ 177; King Supp. Decl. ¶ 48.

In addition, BellSouth's general ordering data cannot show the operational readiness of BellSouth's EDI interface. BellSouth's ordering data include orders placed through LENS and manual interfaces as well as through EDI. This data then cannot show the readiness of EDI. King Decl. ¶ 102. Yet BellSouth presents no other data sufficient to show the readiness of EDI. Although BellSouth relies exclusively on EDI to support its claim that it offers non-discriminatory access to ordering, and states that EDI is in commercial use, BellSouth presents no data showing that the commercial use has been successful. *Id.* ¶¶ 100-02. Indeed, BellSouth fails even to present data showing successful testing

²⁵ In its reply filing with respect to South Carolina, BellSouth did present some data that used actual completion date as the end point of the measurement. This measurement still did not use the correct starting point, however, and it showed significantly better performance for BellSouth retail customers than for CLECs. King Supp. Decl. ¶ 41 .

of EDI with CLECs. Id. BellSouth does present some internal test data on EDI, but not only is internal test data insufficient, the particular data presented lack sufficient explanation to be meaningful. Id. ¶¶ 103-05.

BellSouth's failure to present evidence showing EDI is operationally ready is probably explained by the fact that it is not. There are significant problems with BellSouth's EDI. King Supp. Decl. ¶¶ 22-30, King Decl. ¶¶ 106-11. BellSouth first claimed to have made its EDI interface "available" eleven months ago. King Decl. ¶ 91. It necessarily takes time for CLECs, working with BellSouth, to then develop their side of the EDI interface. Id. The inherently lengthy development process was extended here, at least for MCI, because of BellSouth's inadequate documentation and ever-changing positions on what its interface would support. Id. ¶¶ 93-96. It was only at the beginning of September that MCI and BellSouth succeeded in establishing an EDI interface between them that could be used to begin testing. Id. ¶ 97. As a result, at least if MCI's experience is typical, BellSouth still has had very limited experience with its EDI interface -- certainly not enough experience to iron out the inevitable implementation problems. Indeed, MCI's early testing with BellSouth has revealed significant "mapping" problems that, if uncorrected, would lead to the erroneous rejection of MCI orders. Id. ¶¶ 106-110. Even though MCI mapped correctly to BellSouth's documentation, six of the eight initial test cases MCI sent were rejected. Id. ¶ 111. Although MCI has now developed work-arounds for some of these problems, important problems remain. King Supp. Decl. ¶¶ 22-30. Moreover, some additional problems have become apparent. Id. ¶¶ 28-29. For example, BellSouth's systems have proven incapable of handling orders for multiline hunting and BellSouth has asked MCI not to send any more test orders for multiline hunting until BellSouth determines the cause of the problem. Id. ¶ 28. The multiple problems with BellSouth's EDI have significantly delayed the conclusion of MCI's testing and increased MCI's development costs. Id. ¶ 27. If any other CLEC has

managed to place EDI orders successfully, BellSouth must have worked out these problems specifically with that CLEC but failed to make the solutions generally available. BellSouth's EDI interface, therefore, is not operationally ready.

BellSouth's failure to present data showing the operational status of its EDI interface is mirrored by its failure to provide other essential data. BellSouth fails to provide performance data for any unbundled elements other than loops. Even for loops, BellSouth fails to provide either the data on average installation intervals or the data on comparative performance for analogous retail functions that this Commission has required. Mich. Order ¶ 212; King Decl. ¶ 182. BellSouth also fails to provide data showing parity with respect to ordering of complex services. King Decl. ¶ 183. And, as discussed above, it fails to present data on the timely return of rejection notices, FOCs, jeopardies, and completion notices. BellSouth has therefore failed to show that its systems work as advertised, and as required to serve CLECs on reasonable, nondiscriminatory terms. The fact that BellSouth has failed to present data showing that its systems work at present volumes of orders certainly demonstrates BellSouth's failure to show that its systems have sufficient capacity to work successfully "in a market that is otherwise fully open to competition." DOJ SC Eval. A30.

5. The Functionality Provided Through LENS is Discriminatory.

BellSouth's discriminatory provision of pre-ordering information extends beyond its failure to provide a system-to-system interface. BellSouth also chooses to discriminate in the information and functionality it makes available through LENS and the manner in which LENS makes it available. The ways in which it discriminates are almost too numerous to catalog:

A CLEC using LENS' "inquiry" mode must validate the customer's address each time it accesses any of the pre-order functions and wait for the system to return the information that the address has been validated. King Decl. ¶ 51. A BellSouth representative only has to validate the address one time.²⁶ Id. ¶ 52; DOJ SC Eval. A18-20; FPSC Order 81.

A CLEC using LENS does not have access to much of the Customer Service Record ("CSR") information available to BellSouth representatives. King Decl. ¶¶ 60-61. CLECs using LENS do not, for example, have access to a customer's payment history -- information needed in order to determine the size of a deposit a customer must make to order phone service.²⁷ Id. ¶ 60; FPSC Order 81.

A CLEC using LENS must proceed through each step in LENS' number reservation function in order to reserve a phone number. King. Decl. ¶ 65. BellSouth representatives can simply accept a number pre-selected by the pre-ordering system if it is acceptable to the customer. Id.; FPSC Order 82.

A CLEC can only reserve at any one time 100 phone numbers in a central office or 5% of the numbers available in that office, whichever is less; BellSouth does not apply the same restrictions to itself. DOJ SC Eval. A15.

²⁶ LENS has both an "inquiry" mode and a "firm order" mode. Although the CLEC can avoid the need for multiple address validation by entering the "firm order" mode, the firm order mode requires a CLEC to enter unnecessary ordering information and to access each pre-order function sequentially even if the CLEC only desires to use two or three of the pre-order functions. This is because the firm order mode is really designed for a CLEC that intends to use LENS for both pre-ordering and ordering. The firm order mode is therefore extremely cumbersome for a CLEC that intends to use LENS only for pre-ordering and to use EDI for ordering. King Decl. ¶ 51 n.7; ¶ 72 n.12; King Supp. Decl. ¶ 20. As the Department of Justice explained, "inquiry mode can be expected to be the typical mode." DOJ SC Eval. A17.

²⁷ BellSouth has cited no legal impediment to provision of such information. BellSouth does claim that some of the information in the CSR is not needed by CLECs. But it not should not be up to BellSouth to decide that some information, to which it, of course, has access itself, is not needed by its competitors. King Decl. ¶ 61.

A CLEC using LENS can only reserve a maximum of six telephone numbers in one LENS session; LENS therefore is extremely cumbersome for use with a big customer. King Decl. ¶ 63; FPSC Order 81.

A CLEC reserving a phone number in LENS has no way to view, and hence no way to offer its customer, a choice of NXX codes. King Decl. ¶ 66. A BellSouth representative can easily view such codes and offer the customer a choice among them. Id., FPSC Order 81. A CLEC using LENS can only reserve a phone number for nine days. King Decl. ¶ 67. BellSouth can hold an order, including the number associated with the order, for 30 days. Id.

A CLEC cannot guarantee that its customers will receive the telephone number given them on the phone; BellSouth appears, despite its claim to the contrary, to make such guarantees. Id. ¶ 68. A CLEC can determine whether a vanity number (e.g. CALLMCI) is available by typing that number into LENS, but the CLEC has no access to a list of reserved vanity numbers which could be used to suggest possible numbers to a customer. BellSouth does not disclaim access to such a list in its application. Id. ¶ 69.

A CLEC cannot use LENS to obtain due dates for any service that will be provided using unbundled elements. Id. ¶ 71. A CLEC representative using LENS' "inquiry" mode to obtain a due date must make extensive calculations based on three sets of information provided on the screen and even this date is not the actual due date; the actual due date is provided on the FOC which is often received much later. In contrast, a BellSouth representative using BellSouth's residential pre-ordering system, RNS, receives a pre-calculated due date that is highlighted on-screen. Id. ¶¶ 74-75; DOJ SC Eval. A17-18; FPSC Order 82.²⁸

²⁸ A CLEC representative using LENS' "firm order" mode to obtain a due date must first enter ordering information and then proceed through each pre-ordering function sequentially even if the CLEC only intends to use one of these functions. See n. 26 above.

A CLEC using LENS cannot ascertain whether the customer is subject to local taxes; BellSouth's pre-ordering systems automatically determine the customer's local tax status and populate this information on the order. King Decl. ¶ 82; King Supp. Decl. ¶ 21.

A CLEC using LENS cannot see what promotions BellSouth is offering. BellSouth representatives can see this information. Id. ¶ 83. This information is certainly relevant to MCI, which has a right to resell promotions. BellSouth's simple assertion that promotions are not pre-ordering information cannot hide the fact that BellSouth representatives receive this information at the pre-ordering stage and CLEC representatives do not.

A CLEC using LENS must scroll through lists of PICs and features to determine if the customer's desired PIC or feature is available; BellSouth representatives can simply type in the desired PIC or feature. Id. ¶¶ 78, 80; FPSC Order 82.

A CLEC such as MCI that receives downloads of feature availability information from BellSouth, rather than using LENS, remains at a disadvantage compared to BellSouth's own systems. The downloads fail to contain the Universal Service Order Codes (USOCs) for each feature. King Decl. ¶ 79. Relying on potentially outdated written guides is inferior access.

BellSouth fails to provide access to three functions the industry's Ordering and Billing Forum has agreed are important pre-ordering functions: (1) block of direct inward dial (DID) numbers inquiry; (2) DID trunk inquiry; and (3) unbundled network element service provider inquiry. Id. ¶ 84; Stacy I Aff. ¶ 48.

Thus, LENS is cumbersome to use, fails to provide functionality important to CLECs, and is inferior to BellSouth's own pre-ordering systems in innumerable ways. It does not meet the requirements of section 271.

6. BellSouth's Process of Change Management is Wholly Inadequate.

BellSouth fails to provide CLECs adequate, or often any, notice of changes to its systems. See DOJ SC Eval. A-26; King Supp. Decl. ¶¶ 4, 7, 14, 29. For example, BellSouth did not notify MCI's business units until September that it made changes to its EDI interface in July, although BellSouth's OSS witness noted the changes in state section 271 proceedings (reflecting BellSouth's priorities). King Decl. ¶ 191. Similarly, MCI has generally learned of changes to LENS during section 271 proceedings, and BellSouth has not affirmatively acted to provide MCI's business units with any notice of the changes to LENS. Id. ¶ 190.

Often BellSouth does not update its documentation at all or fails to provide adequate documentation to begin with. DOJ SC Eval. A26. BellSouth failed to update its LENS documentation between June and October despite numerous changes to LENS. King Decl. ¶ 190. Similarly, BellSouth failed to notify MCI of a change in the codes needed to order touch tone service in Florida -- causing MCI's test orders to reject. King Supp. Decl. ¶ 29.

To date, BellSouth's failure to notify MCI of changes to its systems and inadequate documentation has slowed MCI's development and caused minor glitches in the use of LENS. But as the volume of MCI's orders increase and as BellSouth's changes require corresponding changes at MCI's end of the interface, BellSouth's inadequate process of change management is likely to prove disastrous. If, for example, BellSouth makes changes to the fields that must be filled in on an EDI order and fails to give CLECs sufficient time to adjust their systems, CLEC orders will be routinely rejected. King Decl. ¶ 192. BellSouth must therefore adopt and implement a systematic process of change management before it is allowed entry into in-region long distance.

7. Only the Carrot of Long Distance Entry Has Prompted BellSouth to Fix Even Indisputable Problems.

The substantial OSS problems discussed above continue today, rendering BellSouth's OSS grossly inadequate. Although BellSouth has not corrected these serious deficiencies, it has corrected a few other OSS problems, but only after CLECs complained in 271 proceedings. After MCI raised problems with BellSouth's billing during state 271 proceedings, for example, BellSouth promised to fix these problems in September (previously, BellSouth claimed that it could not fix the problems until the end of the year). King Decl. ¶ 214. And it was only during the course of these proceedings that BellSouth promised to cease sending retention letters to CLEC customers before the customer had even been switched to the CLEC. *Id.* ¶ 187. Similarly, it was only in the course of state section 271 proceedings that MCI received updates to LENS documentation. *Id.* ¶ 190.²⁹ Indeed, the very fact that MCI has learned about these systems changes through the state proceedings rather than through business channels indicates that they are driven by regulatory concerns, not business ones. Whether BellSouth will now correct the innumerable OSS deficiencies that continue to plague CLECs remains to be seen, but it is apparent it will not do so if it believes that it can gain in-region long distance authority without doing so.

B. BellSouth Has Not Provided Access to Unbundled Elements In Compliance With the Act.

BellSouth refuses to provide combinations of unbundled network elements that are already combined within its network, and it claims the right artificially to "uncombine" these elements and make a CLEC obtain the unbundled network elements individually and combine them itself. *See* BST

²⁹ BellSouth has also made some limited promises to improve its systems in light of the criticisms MCI raised in response to BellSouth's South Carolina filing. King Supp. Decl. ¶¶ 5-11. The fact that it took a federal section 271 application to obtain even these limited promises, which have yet to be implemented, says volumes about the likelihood of continued improvements in BellSouth's systems once BellSouth is allowed to provide in-region long distance service.

Br. 46; Varner Aff. ¶ 64. Yet BellSouth does not commit to providing network elements in a manner that allows CLECs efficiently to combine them. Instead, BellSouth insists that it need not provide CLECs with access to its network in order to combine network elements, and that collocation is generally the only appropriate method by which CLECs can perform such combining. See BST Br. 47-50; see also Milner Aff. ¶ 25 (suggesting CLEC use of collocation to combine network elements).

BellSouth's position violates section 251(c)(3) -- and thus section 271(c)(2)(B)(ii) -- even under the Eighth Circuit's reading of that provision. The Eighth Circuit based its interpretation of section 251(c)(3) on its understanding that this provision permitted an ILEC to refuse to provide network elements on a combined basis only if the ILEC grants CLECs physical access to its network, and all other necessary information, so that a CLEC can combine the elements itself. Iowa Util. Bd., 120 F.3d at 813. If BellSouth insists on vandalizing its own network so that CLECs will face the additional time and expense of recombining previously combined elements, section 251(c)(3) requires BellSouth to provide CLECs with the access to its network -- both hardware and software -- that CLECs need in order to put back together what BellSouth has broken apart.³⁰ BellSouth makes no commitment to provide such access, even in general terms, in its agreements with PrimeCo, Sprint Spectrum, and MereTel, nor in its agreement with AT&T, nor in its SGAT. Neither does BellSouth describe specific procedures whereby a CLEC can obtain access to BellSouth's network to combine the network elements. Although BellSouth promises in its application to perform all services necessary to allow CLECs to combine network elements, see BST Br. 46, it refuses to provide any detail regarding services it will perform to facilitate combinations, claiming that it would be "premature" to establish terms and conditions for such services now, and relegating any requests for such services to the BFR

³⁰ As part of providing this access, BellSouth must provide the information that permits CLECs effectively to utilize this access -- the information about how its switches are programmed, how its databases can be accessed, and how its physical facilities can be combined.